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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,404	02/01/2002	Charles J. Call	MESO0045	3726

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EXAMINER	
ALEXANDER, LYLE	

ART UNIT	PAPER NUMBER
1743	

DATE MAILED: 07/17/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/066,404	Applicant(s) CALL ET AL.	
	Examiner Lyle A Alexander	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 April 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-87* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-87* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5, 7-8,12-16,25-27,31-33,40-48,53-67,69-78 and 80-87 are rejected under 35 U.S.C. 102(b,b,b,b,e,e) as being clearly anticipated by Reid et al., Bather, Corrigan et al., Bromberg et al., Ornath et al. or Linker et al. respectively.

The art teaches systems that a

Claims 1-5,7-12,14-20,25-27,31-33,40-48,53-67,69-78 and 80-87 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gitis et al. (USP 6,573,836).

Gitis et al. teaches a system for detection of hazardous particle in a parcel. The parcel is confined in a chamber, cutting means opens a portion of the parcel, means are employed to remove the particles that include vacuum and the particle are put into a particle analyzer. Column 12 lines 12-15 teach the parcel can be cut by a blade or laser. Column 5 lines 33+ teach the particles can be analyzed by particle counters and other means. Column 2 lines 5-9 teach the "Smart Cycler" as an exemplary particle detection device which uses optical spectroscopy with fluorescence and has been read on the claimed auto-fluorescence detection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6,21,34-39, are rejected under 35 U.S.C. 103(a) as being unpatentable over Reid et al., Bather, Corrigan et al., Bromberg et al., Ornath et al. ,Linker et al. and Gitis et al. in view of Halvorsen et al.

See Reid et al., Bather, Corrigan et al., Bromberg et al., Ornath et al. ,Linker et al. and Gitis et al. supra.

The art teaches the use of convention particle detectors, but are silent the claimed components of the detector such as a HEPA filter and impactors.

Halvorsen et al. teach a particle detector using a particle impacting plate(122) to aid in the separation of the particles to be analyzed. Furthermore, column 2 lines 20+ teach HEPA filters are known and can remove virtually all contaminants from the air.

It would have been within the skill of the art to modify Reid et al., Bather, Corrigan et al., Bromberg et al., Ornath et al. ,Linker et al. and Gitis et al. in view of Halvorsen et al. and use a well known particle separator that has an impactor. Finally, it would have been within the skill of the art to further modify Reid et al., Bather, Corrigan

et al., Bromberg et al., Ornath et al. ,Linker et al. and Gitis et al. and use a HEPA filter to gain the advantage of removing any dangerous material from the test air sample prior to venting into the atmosphere.

Claims 22-24,28-30,49-52,68,79 rejected under 35 U.S.C. 103(a) as being unpatentable over Reid et al., Bather, Corrigan et al., Bromberg et al., Ornath et al. , Linker et al. or Gitis et al. in view of Carver et al.

See Reid et al., Bather, Corrigan et al., Bromberg et al., Ornath et al. ,Linker et al. and Gitis et al. supra.

The art is silent to the use of a rinse fluid to remove particles/decontaminate the particle counter.

Carver et al. teaches a particle counting device. In 2 lines 45+, Carver et al. teach it is desirable to was the particle counter with a rinse solution. It is advantageous to rinse the device between application of different samples to prevent carry over and contamination.

It would have been within the skill of the art to modify Reid et al., Bather, Corrigan et al., Bromberg et al., Ornath et al. ,Linker et al. or Gitis et al. in view of Carver et al. and employ rinse solutions to the taught particle counter to gain the above advantages.

Conclusion

The Office found Applicants 4/3/03 remarks convincing and has vacated the election of species requirement of paper 8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9319 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Lyle A Alexander
Primary Examiner
Art Unit 1743

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July 11, 2003